

LUKE W. COLE, California Bar No. 145,505
CAROLINE FARRELL, California Bar No. 202,871
BRENT J. NEWELL, California Bar No. 210,312
Center on Race, Poverty, & the Environment
47 Kearny Street, Suite 804
San Francisco, CA, 94108
415/346-4179 • fax 415/346-8723

NANCY S. WAINWRIGHT, Alaska Bar No. 8711071
Law Offices of Nancy S. Wainwright
13030 Back Road, Suite 555
Anchorage, AK 99515-3538
907/345-5595 • fax 907/345-3629

Attorneys for Plaintiffs Enoch Adams, Jr., Leroy
Adams, Andrew Koenig, Jerry Norton and Joseph Swan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

UNOPPOSED MOTION FOR
LEAVE TO TAKE
DEPOSITION OF RANDOLPH
FISCHER BY MARCH 9, 2008
AND DECLARATION OF
LUKE COLE IN SUPPORT
OF MOTION

The Adams Plaintiffs file this motion for leave to take the deposition of Randolph Fischer in this case by March 9, 2008. As the Court is aware, Mr. Fischer is an elected member of the Colorado legislature, and because of his unavailability for trial the Court ordered his testimony to be offered by deposition. Order at Docket 167. The Court has also ordered all deposition testimony to be used at trial (in May 2008) to be filed by January 22, 2008. Order at Docket 177.

MOTION FOR LEAVE TO TAKE DEPOSITION
OF RANDOLPH FISCHER BY MARCH 9, 2008

1 In preparing the statement of issues, the statement of uncontested facts, the witness lists
 2 and the trial exhibits for filing on January 22, as well as updating the expert reports for filing on
 3 January 18, the parties have been unable to find a mutually agreeable time in the four parties'
 4 attorneys' schedule and Mr. Fischer's schedule (which, during legislative session, is limited to
 5 Sundays). Declaration of Luke Cole in Support of Motion ("Cole dec."), ¶2. The parties have
 6 identified March 9, 2008, as a mutually acceptable date on which Mr. Fischer is available to be
 7 deposed. Cole dec. ¶3. Adams thus respectfully requests leave of the Court to depose Mr.
 8 Fischer on March 9 and file his deposition transcript as soon thereafter as it is prepared by the
 9 Court reporter.

10 NANA, the Northwest Arctic Borough, and Teck Cominco do not oppose this motion.
 11 Cole dec. ¶4. Indeed, it was counsel for Teck Cominco who suggested we ask the Court for a
 12 time to take the deposition after the deadline for filing exhibits and witness lists because of the
 13 difficulty in scheduling the deposition. Cole dec. ¶4.

14 Because trial is not until May 19, and Mr. Fischer's testimony will not be used until the
 15 penalty phase of the trial (projected for July), no party would be prejudiced by not having the
 16 deposition testimony filed sooner than March 9. Parties would be prejudiced by having to take
 17 several travel days to get to and from Denver, and a day of deposition in Denver, between now
 18 and January 22, however. Cole dec. ¶5.

19 January 9, 2008

Respectfully submitted,

CENTER ON RACE, POVERTY & THE
 ENVIRONMENT

 /s/ Luke Cole
 Luke Cole

Attorneys for Plaintiffs

DECLARATION OF LUKE W. COLE IN SUPPORT OF MOTION

I, Luke Cole, declare:

1. I am over 18 years of age and not party to this action.

2. In preparing the statement of issues, the statement of uncontested facts, the witness lists and the trial exhibits for filing on January 22, as well as updating the expert reports for filing on January 18, the parties have been unable to find a mutually agreeable time in the four attorneys' schedule and Mr. Fischer's schedule (which, during legislative session, is limited to Sundays).

3. The parties have identified March 9, 2008, as a mutually acceptable date on which Mr. Fischer is available to be deposed.

4. I have spoken with counsel for NANA, the Northwest Arctic Borough, and Teck Cominco and they do not oppose this motion. In fact, it was counsel for Teck Cominco who suggested we ask the Court for a time to take the deposition after the deadline for filing exhibits and witness lists because of the difficulty in scheduling the deposition.

5. The Adams plaintiffs would be prejudiced by having to take several travel days and a day of deposition in Denver between now and January 22, as they are working to put together the various filings due on January 18 and January 22, 2008 under the Court's pretrial orders.

I declare that the foregoing is true and correct. Signed under penalty of perjury this 9th day of January, 2008 at San Francisco, California.

/S/ Luke Cole

1 CERTIFICATION OF SERVICE

2 I certify that on the 9th day of January 2008, a true and correct copy of the Unopposed Motion for Leave to Take
3 Deposition of Randolph Fischer and Declaration of Luke Cole were served via electronic mail on the following
counsel of record:

4		David Case
5	Sean Halloran	Landye Bennet Blumstein
6	Hartig Rhodes	701 West Eighth Avenue, Suite 1200
7	717 K Street	Anchorage, AK 99501
8	Anchorage, AK 99501	(dcase@lbblawyers.com)
9	(sean.halloran@hartig.com)	

10	Nancy S. Wainwright	James E. Torgerson
11	Law Offices of Nancy S. Wainwright	Heller Ehrman
12	13030 Back Road, Suite 555	510 L Street, Suite 500
13	Anchorage, AK 99515	Anchorage, AK 99501
14	(nsw@alaska.com)	(JTorgerson@HEWM.com)

15 Thane Tienson
16 Landye Bennet Blumstein
17 1300 Southwest Fifth Ave, Suite 3500
18 Portland, OR 97201
19 (ttienson@landye-bennett.com)

20 /s/ Luke Cole
21 Luke W. Cole